

FILED
Court Administrator

STATE OF MINNESOTA

JUN 22 2011

DISTRICT COURT

COUNTY OF RAMSEY

By  Deputy

SECOND JUDICIAL DISTRICT

Case Type: Civil

**In Re Temporary Funding of Core
Functions of the Executive Branch
of the State of Minnesota**

Court File No. 62-CV-11-5203

**RESPONSE OF LEAGUE OF MINNESOTA CITIES,
COALITION OF GREATER MINNESOTA CITIES,
AND THE CITY OF ST. PAUL
TO, AND COMMENTS ON,
PETITION AND GOVERNOR'S RESPONSE**

INTRODUCTION

The League of Minnesota Cities (“League”) has a voluntary membership of 830 out of 854 Minnesota cities. The League represents the common interests of Minnesota cities before judicial courts and other governmental bodies. The Coalition of Greater Minnesota Cities is a nonprofit, nonpartisan advocacy organization that represents 75 cities outside of the seven-county metropolitan area. The City of St. Paul is the Capital city of Minnesota and is home to roughly 290,000 residents. For purposes of this memorandum, each of these parties present their comments collectively, and any reference herein to the “League” should be understood as a statement of position joined by all of these listed entities.

Minnesota’s state government may be on the verge of shutting down. Resolution of the apparent impasse will require the Legislature to pass appropriations bills that will be signed by the Governor or that have the support of two-thirds of each house. However, the State—by action of the Legislature approved by the Governor—has already authorized the spending of certain money via open and standing appropriations. Local Government Aid (“LGA”) is one

such appropriation. LGA was established as a method of providing fairness in property taxation across the state. The underlying philosophy of the LGA program is that all Minnesotans have a right to basic services such as police and fire protection.

The League submits this memorandum relating to LGA and various other similar types of funding for local governments, payable in 2011, which have already been appropriated. The amounts appropriated for cities are vital for the safety of private and public property. The League's filing is devoted to the propositions that (1) this proceeding should not disturb appropriations already made, including LGA, and (2) monies that have already been appropriated for LGA and other services provided by cities should be paid on schedule.

DISCUSSION

As acknowledged by the Attorney General in her Petitioner's Memorandum in Support of Motion for Relief (at note 1 on page 1), the Legislature and the Governor have taken final and appropriate action to authorize and mandate payments in 2011 and thereafter for certain aid to local governments. Codified at Minnesota Statute Section 477A.03, entitled "APPROPRIATION," is what is known as a "standing appropriation." This standing appropriation is the result of a proper enactment by both houses of the Minnesota Legislature, followed by a governor's signature. The law spells out the total amount "for aids payable in 2011 and thereafter," that is to be "paid" to cities. In its current form, Section 477A.03 subdivision 2a, states "**Cities:** For aids *payable in 2011 and thereafter*, the total amount *paid* under section 477A.013, subdivision 9, is \$527,100,646." Those terms are most recently the consequence of the adoption by the 2010 Minnesota Legislature (and execution by then-Governor Pawlenty) of 2010 Minnesota Laws ch. 215, art. 13, § 7, which amended subdivision 2a to provide "For aids payable in ~~2009~~ 2011, and thereafter, the total aid paid under section 477A.013, subdivision 9, is

~~\$526,148,487, subject to adjustment in subdivision 5~~ \$527,100,646.” That session specifically provided that “This Section is effective for aids payable in 2011 and thereafter.” 2010 Minn. Laws ch. 215, art. 13, § 7.

Moreover, a separate subdivision of section 477.013 provides not only the appropriation for LGA but also funding needed to administer the staffing necessary to distribute that aid. Specifically, Minnesota Statutes Section 477A.03, subdivision 2, specifies that “a sum sufficient to discharge the duties imposed by Minn. Stat. § 477A.011 to 477A.014 is annually appropriated from the general fund to the commissioner of revenue.” Among the “duties imposed by Minn. Stat. § 477A.011 to 477A.014” are the requirements for dividing up the local government aid pursuant to formulas set forth in Section 477A.013, as amended most recently in 2010. See 2010 Minn. Laws ch. 215, art. 13, § 5, and 2010 Minn. Laws. ch. 389 art. 8, § 16. Minn. Stat. § 477A.015 states: “The commissioner of revenue shall make the payments of local government aid to affected taxing authorities in two installments on July 20 and December 26 annually.” The amounts scheduled to be paid on July 20, 2011, and December 26, 2011, for local governmental aid were certified to each city in July 2010. If the State somehow fails, by July 20, 2011, either to pay the installment due on that date or to calculate for each eligible Minnesota city the amount of the standing appropriation to which those cities are entitled in 2012 pursuant to the applicable formula, it will have failed to discharge a duty imposed by Minn. Stat. § 477A.011 to 477A.014.

LGA payments are needed to cover police, fire and other emergency response teams supported and maintained by cities. For example, police and fire protection constitutes 58% of the City of Saint Paul’s general fund spending, and LGA is 28% of the City’s general fund. Similarly for the City of Winona, police and fire and other public safety needs make up 55% of its spending and LGA is 49% of its general fund spending. For Morris, the figures are 50% and

64%, respectively. For Crookston, the figures are 49% and 70%. Figures such as these are generally representative of the situation in many cities.

In addition to LGA, similar state funding for various other programs has been appropriated. For example, aid is scheduled to be paid for police and fire pensions, market value homestead credits and other programs. A listing of specific funding appropriations and supporting statutory citations is tabulated in Exhibit A, which is incorporated herein. Each of these existing appropriations payable in 2011 is crucial for the affected cities or other units of local government.

The foregoing points should not be overlooked in considering the comments of the various parties and others who are submitting responses, submissions for *amicus curiae*, or other filings. The League freely and wholly acknowledges that the current budget impasse threatens many significant operations of state funding. There is no justification, however, in law or elsewhere, to interrupt LGA and other similar funding that has already been appropriated.

The Attorney General, as Petitioner, has asked the Court to “direct that core functions of the executive branch of government continue to be performed and that payments be made for the performance of such functions.” Certainly, the League supports any measures that appropriately address the many valid concerns about core functions of government. The point of the League’s comments herein, however, is to ensure that LGA and other existing authorizations are implemented. As noted above, the Attorney General acknowledges the standing appropriation for aid to local governments. The League does not understand the petition to seek any effort to disturb local governmental aid. The League respectfully observes that the petition has been served upon county officials and a wide variety of other parties, with specific reference to relief proposed that bears directly upon counties. However, the petition has not been served upon city

officials and there is no specific reference to any proposal to disturb aid to cities. Thus, there is no procedural justification to disturb aid to cities.

The Governor has submitted a Response to the Petition of the Attorney General. The Governor encourages the appointment of a mediator. The Governor devotes considerable attention to his view that power to spend money “not appropriated” is limited and that the Governor has powers that may be invoked in the event that the Legislature fails to appropriate. The Governor also outlines an approach to establish statewide objectives in the event of a shutdown. The League does not presume to address the issues explicitly addressed by the Governor other than to reiterate support for any responsible and appropriate response to the impending crisis. However, the point of these comments is to address LGA and similar appropriations that have actually already been made. The League observes that the Governor’s Response is silent concerning the implementation of LGA or other funding that has already been appropriated. The Governor’s list of Priority One and Priority Two Critical Services fails to confirm that the Revenue Department would employ the funds already appropriated to disburse to cities the sums scheduled to be paid on July 20, 2011, and December 26, 2011. The League hopes that the Governor’s approach is intended to address matters for which money has not been appropriated, without prejudice to matters such as LGA that has, in fact, already been appropriated.

Both the Governor and Attorney General have acknowledged that Minnesotans must be provided basic constitutional protections with regard to health, safety and welfare. Both have suggested that the Department of Public Safety and the Bureau of Criminal Apprehension be fully funded, for example. City police and fire departments provide those same protections and

should be considered the same “core service.” With respect to LGA and similar standing appropriations, the Legislature, too, has authorized the funding of these services for cities.

As explained, the League and its members claim an interest relating to aid to local governments and other similar standing appropriations. They have a serious concern, however, about whether aid to local governments, already appropriated, will become a subject of the action. If aid to local governments payable in 2011 were implicated by the relief requested by the Attorney General in her petition or by the response of the Governor, the League and its members would be so situated that the disposition of the action might as a practical matter impair or impede the ability of the League and its members to protect their interests, in which case they would be entitled to intervention as a matter of right under Rule 24.01 of the Rules of Civil Procedure.¹ In the alternative, if aid to local governments and other similar standing appropriations payable in 2011 were threatened in this proceeding, the claims of the League and its members concerning appropriations for cities would present a question of law or fact in common with the issues presented by the other parties to this proceeding, in which case the League would rely upon Rule 24.02 of the Rules of Civil Procedure for permissive intervention.

The League and its members hope that state officials will follow the mandates of existing law and appropriations, and will fund aid to local governments with all associated necessary steps. The League invites the Governor or other officials responsible for aid to local governments to clarify whether the intent is to implement the existing appropriations. Should the aid go unpaid when scheduled or should responsible officials announce any refusal to make the payments when

¹ Similarly, under Rule 19.01, the League and its members claim an interest relating to governmental aid. To the extent that the action threatens such aid, cities are so situated that the disposition of the action may as a practical matter impair or impede the ability of cities to protect that interest. As such, cities would be parties to be joined if feasible if the aid that has been appropriated to them were put in peril.

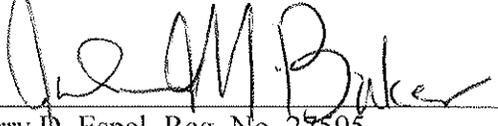
due, then the League would take such steps as may be necessary to enforce applicable law, including a declaratory judgment action, mandamus, or other suitable procedures.

CONCLUSION

The League respectfully acknowledges the serious issues addressed by Petitioner and the Governor. The League understands that the impasse threatens many core and crucial priority functions of state government, and hopes that the impasse can be resolved quickly and reasonably. The League submits these comments to urge the parties and the Court to ensure that any steps or procedures taken in this matter should not disturb or neglect the LGA that has already been appropriated for Minnesota cities. LGA and similar standing appropriations are vital to the core functions of local government, including the safety and security of persons and private and public property in our municipalities.

Dated: June 22, 2011

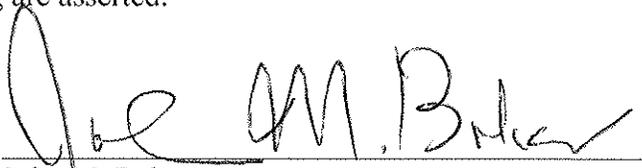
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ACKNOWLEDGMENT

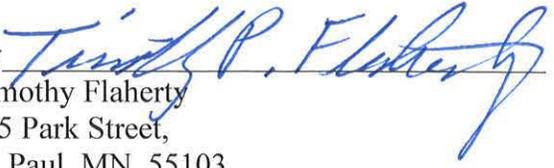
The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, subdivision 2, to the party against whom the allegations in this pleading are asserted.



John M. Baker

Dated: June 22, 2011

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Sara Grewing
Sara Grewing

EXHIBIT A

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Program	Statutory Citation	Appropriation	Payment Date (s)
Local Police and Paid Fire Relief Association Amortization State Aid	Minn. Stat. § 423A.02, Subdivisions 1 and 3a	Standing; "\$4,720,000 is annually appropriated from the general fund to the commissioner of revenue for amortization state aid under subdivision 1, and for the reallocation of amortization aid under subdivision 3."	1/3 of annual amount on July 15, 1/3 on September 15, and 1/3 on November 15
Local Government Aid	Minn. Stat. § 477A.03 subdd 2 and 2a	Standing; "For aids payable in 2011 and thereafter, the total aid paid under section 477A.013, subdivision 9, is \$527,100,646." "A sum sufficient to discharge the duties imposed by sections 477A.011 to 477A.014 is annually appropriated from the general fund to the commissioner of revenue."	½ of annual amount on July 20; ½ on December 26
Public Employee Retirement Association (PERA) Employer Aid	Minn. Stat. § 273.1385	Open and Standing; "The amount necessary to make these aid payments is appropriated annually from the general fund to the commissioner of revenue."	½ of annual amount on July 20; ½ on December 26
Utility Value Transition Aid	Minn. Stat. § 477A.16	Open and Standing; "An amount sufficient to pay transition aid under this section is annually appropriated to the commissioner of revenue from the general fund."	½ on July 20; ½ on December 26
Police and Fire Pension Aid	Minn. Stat. §§ 69.011 to 69.051	Open and Standing; "There is hereby appropriated annually from the state general fund to the commissioner of revenue an amount sufficient to make the police and fire state aid payments"	October 1
Supplemental Police and Paid Fire Amortization State Aid	Minn. Stat. § 423A.02, Subdivisions 1a and 3a	Standing; "\$1,000,000 is annually appropriated from the general fund to the commissioner of revenue for supplementary amortization state aid under subdivision 1a, and for the reallocation of supplementary amortization state aid under subdivision 3."	October 1
Additional Amortization State Aid	Minn. Stat. § 423A.02, Subdivision 1b	Standing; "The amounts required under this subdivision are the amounts annually appropriated to the commissioner of revenue under section 69.021, subdivision 11, paragraph (e)"	October 1

EXHIBIT A

Program	Statutory Citation	Appropriation	Payment Date (s)
Market Value Homestead Credit	Minn. Stat. § 273.1384	Open and Standing; “An amount sufficient to make the payments required by this section to taxing jurisdictions other than school districts is annually appropriated from the general fund to the commissioner of revenue.”	½ on October 31; ½ on December 26
Agricultural Market Value Homestead Credit	Minn. Stat. § 273.1384	Open and Standing; “An amount sufficient to make the payments required by this section to taxing jurisdictions other than school districts is annually appropriated from the general fund to the commissioner of revenue.”	½ on October 31; ½ on December 26
Volunteer Fire Lump Sum Supplemental Benefit State Reimbursement	Minn. Stat. § 424A.10	Standing; “A sum sufficient to make the payments is appropriated from the general fund to the commissioner of revenue.”	March 15

